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FILE:



MSC 06 096 11976

Office: CHICAGO

Date:

APR 22 2008

IN RE: Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wieman".

Robert P. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Acting District Director, Chicago. The appeal will be dismissed.

The acting district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status. More specifically, the applicant admitted that he was absent from the United States from February 1988 to September 2001, which the acting director found rendered the applicant ineligible pursuant to 8 C.F.R. § 245a.1(c)(1)(i).

On appeal, the applicant stated that he had filed his application prior to leaving the United States, and implied that his requisite period of residence in the United States was therefore over.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the acting director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the acting director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the acting director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the acting director can articulate a material doubt, it is appropriate for the acting director to either request additional evidence or, if that doubt leads the acting director to believe that the claim is probably not true, deny the application or petition.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On the instant Form I-687 application the applicant stated that he filed a previous Form I-687 in Illinois during 1988, without providing any more specific date, but was informed that he was ineligible. The applicant further stated that he left the United States for Kenya during February 1988 and returned to the United States during September 2001. Finally, the applicant indicated that he had never been employed in the United States prior to October 2002.

The record contains undated, unsigned form declarations from [REDACTED]

[REDACTED] and [REDACTED]. The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In his affidavit, [REDACTED] stated that he is the applicant's uncle. He stated that he knew the applicant was in the United States because, among other reasons, he received photographs of him. He further stated that he has no photographs of the applicant in the United States.

[REDACTED] indicates that he is the applicant's cousin. [REDACTED] indicated that she is the applicant's aunt. [REDACTED], and [REDACTED], did not indicate any familial relationship to the applicant.

None of those affiants claim to have seen the applicant in the United States, or ever to have been to the United States themselves. Some say they saw the applicant leave from the airport on his way to the United States. Some say that they saw his airline ticket. The affiants state that they received periodic reports pertinent to the applicant's life in the United States. None mention the applicant being absent from the United States at any time since his initial entry.

In the Notice of Decision, dated September 11, 2006, the acting director denied the application based on the applicant's admitted absence from the United States.

On appeal, the applicant asserts that his absence was after his requisite period of residence as it was after he filed or attempted to file his initial Form I-687. The applicant provided no evidence in support of that assertion, and no other new evidence. The applicant offered no further argument.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The applicant stated on the instant Form I-687 application that he was absent from the United States from some unstated date in February 1988 to some unstated date in September 2001. If that absence includes 45 days within the requisite period of residence, then the applicant is ineligible pursuant to 8 C.F.R. § 245a.2(h)(1).

The applicant's requisite period of residence began on January 1, 1982 and ended when he filed his initial Form I-687. The applicant stated on the instant Form I-687 that he filed that previous Form I-687 during 1988, but with no additional specificity. Now, on appeal, he indicates that it was before he left the United States during February 1988 but, again, without providing any more specific date.

If the applicant could demonstrate that he filed his initial I-687 before he left the United States, then his absence would be irrelevant to his demonstrating continuous residence in the United States during the requisite period. The applicant has provided no specific date upon which he allegedly filed his initial Form I-687 and no specific date upon which he left the United States. The applicant stated, on appeal, that one preceded the other, but without offering any more concrete history.

The applicant has not demonstrated that he filed his initial Form I-687 application prior to leaving the United States in February 1988. The applicant has not demonstrated, therefore, that 45 days or

less of his absence fell within the qualifying period. For this reason alone, this office would find that he failed to demonstrate that he continuously resided in the United States during the requisite period and that he is ineligible.

This office notes further, however, that the record contains insufficient evidence of the applicant's presence in the United States at any time during the requisite period, let alone evidence that he resided in the United States continuously during that period. Further, the record does not even contain affidavits from people who knew the applicant in the United States and can attest to his presence and residence there. The only indications in the record that the applicant was in the United States at any time during the requisite period are his own assertions and affidavits from people in Kenya, who do not indicate that they were ever in the United States. This additional lack of reliable evidence is also, in itself, sufficient reason to deny the application.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the paucity of credible supporting documentation he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.